

Modern Problems of Russian Sport Legislation

Yurlov Sergey

Abstract—The author examines modern problems of Russian sport legislation and whether it need to be changed in order to allow all sportsmen to participate, train and have another sportsmen's rights as Russian law mandates. The article provides an overview of Russian sport legislation problems, provides examples of foreign countries. In addition, the author suggests solutions for existing legal problems.

Keywords—Amendment, legal problem, right, sport.

I. INTRODUCTION

Russian sport legal regulation consists of different laws and government decrees related to different aspects of sport relations [1]. Unfortunately, Russian sport legal regulation is not the best in the world and has some significant lacks and problems, which are raised difficulties for sportsmen [2]. More importantly, Russian Government do not concern amending Russian Law on sport and other statutory acts. Russian government shall procure sportsmen's rights, especially in individual sports.

The main problem lays in basic principles of sport regulation and their enforcement. Russian sport legal regulation does not provide for sportsmen real guarantees of their rights. Every sportsman looks for governmental guarantees and support [3]. Each sportsman should have adequate conditions for his activity. Actually, Russian sportsman has no rights or they are reduced or restricted.

It is thought that, four groups of legal problems should be mentioned:

1. Problems of sportsmen's training and participation in different sport (official – non-official) competitions;
2. Problems related to sport disputes resolution in jurisdictional bodies of sport federations and sport arbitration courts;
3. Problems regarding Russian Law on Sport - its controversial provisions, vague wordings etc.;
4. Problems related to sports funding in Russia.

II. PROBLEMS OF SPORTSMEN'S PARTICIPATION

The most important are the problems of the first group. The first group consists of the following relevant legal aspects.

Firstly, there is no enforcement of principle that is stated in Article 3 of the Federal Law of 04.12.2007 N 329-FZ "On Physical Culture and Sports in the Russian Federation" (hereinafter – "Law on Sport"): right of everyone to have free access to physical education and sport as necessary conditions for the development of physical, intellectual and moral

abilities of the individual, the right to physical education and sport for all citizens and groups. More importantly, Law on Sport also establishes state guarantees of the rights in the field of physical culture, as well as promoting the development of all aspects of sport, including youth and student sport. The Law on the sport in Art. 24 also imposes the right of an athlete to participate in sports competitions in selected sports in accordance with the adopted rules. Each athlete has athletic performance. However, paragraph 15.1 of Article 2 of the law on sport defines sports/athletic training as a planned activity leading to mandatory regular participation in competitions, with the aim of improving physical education and sports skills. On this basis, it is mandated that the State (municipal) assignment is to provide services for sports training. The above-mentioned Articles of the Law on Sport set State policy in the field of sports. From our point of view, the main elements of this notion are the training process and participation in competitions.

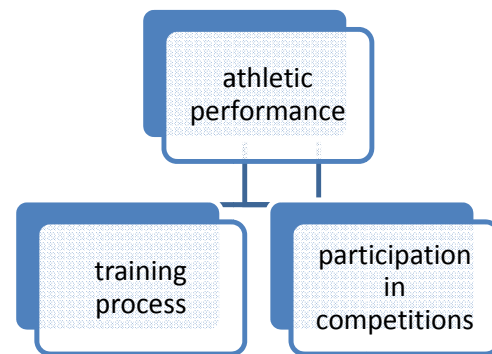


Fig. 1 The main components of athletic performance

Unfortunately this principle is not kept in mind by Russian sports management. For example, Laws (and rules) do not allow student athletes to take part in external competitions, which are held not among the students. Conventionally, all swimming competitions can be divided into two large groups:

1. Competitions which are held among University teams (Student games and Universiade, championships among students). Regarding this group of the competitions there is a problem with the Russian national Universiade. Preliminary rounds are held in each sporting discipline, which lead on to selection for the national Universiade. Only two teams are selected for each sporting discipline for the national Universiade. There is often a situation where a University team is selected for the final stage of the national Universiade, but that University's administration refuses to allow the team to participate, due to lack of funds. From our point of view, it seems that

Sergey Yurlov is with the Moscow State University, Law Department, Moscow, 119991, Russia (e-mail: tommii125@yandex.ru).

this is inadmissible. In order to avoid such situations financial administration of the Universities should distribute and estimate money on the sport;

2. Competitions which are held not among the students, but among athletes of other categories, subdivided into physical culture schools and other physical education and sports institutions.

According to p.23.1 Article 2 of the Law on Sport student sports – is a part of the sport, aimed at physical education and physical training in educational institutions of secondary and higher vocational education, training them to take part and participate in physical activities and sports events, including those in the formal physical activities and sports. Based on this definition, we can say that the students have to train and take part in various competitions, such as the students (Student Games, Universiade), as well as among the other athletes who are not students. What is the real practice? For example, according to p.4 of the regulations of the ‘Moscow Swimming Cup’¹, participation includes the strongest men, women and boys born in 1995/6 and girls born in 1997/8 from teams of physical culture schools, sports schools and associations. Nothing about University students or student teams is stated. This means that students not registered in any of the above-listed schools before entering University cannot take part in the Moscow Swimming Cup, even if they meet the requirements regarding qualifying time in their discipline. It has been argued that this competition is purely for sporting clubs. However, we note that in 80% of Universities there are no sporting clubs and if there are, they are only sporting clubs ‘on paper’. Approximately four of the Moscow Universities have sport clubs. It seems that this situation has been allowed to develop through a lack of procedural rules put in place by the Russian Swimming Federation and its regional bodies. The Russian Swimming Federation should consider amending the regulations by entitling students to place a requisition on such competitions for inclusion. However, strictly speaking, there is not any difference between a physical culture athlete and University student competing – often they can be the same person! If he/she complies with the regulations and achieves the qualifying standards, he/she should have the right to compete without restrictions.

Individuals that are not members of physical culture schools have similar problems and difficulties, however according to Article 5 of the Law on Sport they are entitled to participate in physical culture and sports as citizens of the Russian Federation. Over the last few years, bad practice has developed, such as prohibiting private participation. A few years ago, the rules of such competitions allowed citizens to place a request in order to be allowed to compete. Prohibiting such requests can be regarded as a violation of the basic principles of the law on sport, namely that each person has free access to physical education.

They have no opportunity to take part in official sport competitions in general, whilst student have right to take part in competitions held among the students.

Secondly, sportsmen have inadequate conditions for training, which is reflected in a lack of sports facilities, funds and equipment. When such facilities do exist; athletes often find them in bad condition, especially swimming pools, which prevent adequate implementation of the training procedure. Individuals that are not members of physical culture schools have no training aids in general: swimming pools; equipment; coaches etc.

Thirdly, being a professional i.e. a member of Federal subject’s team, sportsman does not receive any wages for such participation. It is thought that it is bad practice. It is thought that it is no odds whether a sportsman has another regular job (employment under the main employment agreement), but if he trains, participates he has a right to receive all the benefits for his efforts. Actually, there are no legal provisions related to financial support of sportsman [4].

III. PROBLEMS OF SPORT DISPUTES RESOLUTION

Modern sport relations include not only trains and competitions but also different contractual relations, for example, sponsorship and advertising contracts etc. Therefore, it is very important to solve disputes arising out of the sport.

Sport disputes resolution procedure is a unique procedure. It has some special features include but are not limited to:

- Since sports law is a complex branch of law, sport disputes resolution bodies have to apply a wide range of legal provisions;
- Sport disputes should be adjudicated in the short run;
- Sport is a specific sphere of social life, therefore judges should have special knowledge;
- Sport disputes resolution bodies have to implement internal legal provisions mostly (for example, legal acts of sports federation or league or club);
- Sport disputes resolution body’s ruling may be a subject to special enforcement proceedings etc.

Theoretically, there are three groups of bodies created for sport disputes resolution. These groups look as follows:

- Sport federation Jurisdictional Body;
- Sport arbitration court and
- Court of general jurisdiction.

Sport federation jurisdictional body is a part of sport federation that works on a rolling basis, consists of professionals that have special knowledge and experience in certain sport (for example, swimming) and empowered to resolve all categories of sport disputes.

Sport arbitration court is an institutional (or ad hoc) independent body empowered to consider different categories of sport disputes, consists of professional judges that have special Sports law knowledge. This court is constituted and operates in accordance with the Federal Law No.102-FZ “On arbitration courts in Russian Federation” dated July 24, 2002 (as amended). The main advantage of Sport arbitration court is independence from sport federation and other government bodies. Other advantages include but are not limited to:

- Sport Arbitration courts have strong legal base that provides more opportunities in decision-making;

- Sport Arbitration court rulings are subject to enforcement proceedings;
- Sport Arbitration courts may constitute ad hoc divisions at the most important sport competitions in order to solve sport disputes quickly and properly. For example, Court of Arbitration for Sports (CAS) establishes an ad hoc division at each Olympic Games;
- Sport Arbitration court creates more precedents, renders landmark decisions that can be used in further cases by counterparties and sport management;
- Procedure in Sport Arbitration court is more flexible, there are no vague wordings, there a few of binding provisions. The parties to a dispute may include / exclude proceedings. There is a real opportunity to submit a dispute to mediation.

Court of general jurisdiction is an institutional body constituted in accordance with the Federal Constitutional Law No, 1 - FKZ "On the Judicial System of the Russian Federation" dated December 31, 1996 (as amended). Court of general jurisdiction is a part of Russian judicial system as well as commercial and Constitutional Court. Court of general jurisdiction is not created specifically for sport disputes resolution. The main purpose of such court – consider disputes arising out of civil and criminal relationships therefore its judges have no special Sports law knowledge.

The problems of the second group are very important too. These problems include the following relevant legal practical aspects.

Firstly, Russian Law on Sport does not contain any provision related to sport disputes. This law does not mention the concept of a "sport dispute". Russian sport legal regulations are therefore found lacking. Since Law on Sport does not contain sport disputes resolution clauses, Russian sport federations have to adopt internal legal acts, codes on dispute resolution. This is a grave disadvantage of Russian sport related legislation.

Secondly, most of the Russian sport federations have no (internal) jurisdictional bodies, which can consider sport disputes. More importantly, Russian sport federations have no internal legal provisions (or they are very bad, unenforceable and not applicable in real practice) regarding sport disputes resolution. Ideally, sports federation jurisdictional bodies shall be considered as obligatory stage in dispute resolution before bringing a case before sport arbitration courts and Courts of general jurisdiction. In Russia, there are only two sport arbitration courts. Unfortunately, these courts consider cases very rare (only 10-15 cases per year). Thus, sport arbitration courts cannot establish real precedents on a rolling basis.

Thirdly, sportsmen have no right to appeal a decision of the sport federation concerning disciplinary and doping matters and sport disputes in general.

Fourthly, Russian Law on Sport does not contain any provision related to sport dispute, sport dispute resolution. This Law does not mention the concept "sport dispute".

Fifthly, if the jurisdictional bodies exist, actually, they have no rights. It is thought that, jurisdictional bodies shall have the right to take interim measures (injunctions) to secure the claim

upon request by one of the parties to a dispute.

IV. PROBLEMS OF LAW ON SPORT'S PROVISIONS

The third group of legal problems is composed of lacks of the Law on Sport's provisions. Occasionally they are simply controversial. It is thought that, the following problems should be mentioned.

Firstly, vague wordings of the general notions and definitions (Art.2 of the Law on Sport). For example, the concept "sport" is very fuzzy and excessive scientific. The concept "official sport events" is very controversial.

Secondly, Law on Sport consists of controversial provisions related to official / usual sport events.

Thirdly, Law on Sport does not contain any provision regarding sport disputes resolution.

Fourthly, Law on Sport contains bad quality provisions, which determined sportsmen's rights [5].

V. GUIDANCE FOR RUSSIAN ADMINISTRATIVE OFFICIALS

Russian law on sport shall be amended. These amendments must be substantial. Unfortunately, nowadays we can see only "cosmetic" amendments, which are lobbied by small groups of people. Primarily, are entitled to updates articles related to sportsmen's rights (art.24), sport federation rights (art.16), general notions and definitions (art.2), articles related to student's sport (art.28.), articles related to legal regulation of official / non-official sport events (competitions). Sport federations shall fulfill their obligations in full-scale.

The unique solution could be establishing in the law on sport the equal rights of the different categories of athletes. Firstly, in the law on sport should be established different types of application forms of:

- Person (for those who are not registered in any physical culture school);
- Student;
- Physical culture school;
- Student sport clubs;
- Organizations.

By virtue of these forms, different categories of athletes should apply for competitions. Secondly, in the law on sport (article 24) should be fixed sportsmen's right to take part in any competitions if he complies with requirements that are set forth in competition regulations. Also in the law on sport (article 24) should be fixed another important sportsmen's right to train.

Russian law on sport shall be amended by adding articles related to sport disputes resolution. Law on sport shall have separate chapter related to sport disputes resolution proceedings. In addition, Russian swimming federation shall constitute its own jurisdictional bodies that are entitled to adjudicate sports law cases [6].

Russian Swimming Federation shall consider amending the regulations by entitling students and individuals that are not members of physical culture schools to place a requisition on such competitions for inclusion.

Law on Student sport and School / Youth Sport shall be

enacted. There was an attempt in 1999 by the State Duma, who introduced a draft Bill no. 99044346-2 "of collegiate sports in the Russian Federation", which would have represented a good step on the way to legal consolidation. However, for unknown reasons it was rejected. It is necessary to develop a new Bill. This law will contain provisions devoted to legal regulation of students' training process, participation, students' sport funding and its organizational framework. Ideally, Russian government shall concern enacting Russian Sport Code, because each legal state shall have sport code. Enacting sport code – is a global practice. Sport Code exists in several countries: France; Brazil and Italy (special Codes related to dispute resolution); in several States of the USA. The Republic of Belarus has sport code draft (likely it will come into legal force in 2015). It is thought that Russian government shall follow the examples of these countries.

It is thought that, the principle of equality of rights of different categories of sportsmen shall be fixed in Law on Sport.

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